

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
ACS Wireless, Inc.	)	File No.: EB-FIELDWR-12-00005502
Registrant of Antenna Structure No. 1204036	)	NAL/Acct. No.: 201432780002
Eagle River, Alaska	)	FRN: 0001567940

**FORFEITURE ORDER**

**Adopted: January 8, 2015**

**Released: January 9, 2015**

By the Regional Director, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. We impose a penalty of \$8,000 against ACS Wireless, Inc. (ACS) for failing to monitor and exhibit the required lighting on its antenna structure and notify the Federal Aviation Administration (FAA) of a light outage. ACS does not deny the violations, but requests that we reduce or cancel the proposed forfeiture because of its purported efforts to correct the lighting issues, its history of compliance with the Commission's lighting requirements, and its inability to pay the proposed forfeiture amount. We find no basis to reduce or cancel the proposed forfeiture based on ACS's history of compliance or inability to pay claims, but find that a reduction is warranted based on ACS's good faith efforts to comply with the antenna structure lighting rules prior to being notified of the outage by FCC agents.

2. Specifically, we issue a monetary forfeiture to ACS, registrant of antenna structure number 1204036 in Eagle River, Alaska (Antenna Structure), for willfully and repeatedly violating Section 303(q) of the Communications Act of 1934, as amended (Act),<sup>1</sup> and Sections 17.47, 17.48, and 17.51(a) of the Commission's rules (Rules).<sup>2</sup>

**II. BACKGROUND**

3. On November 5, 2013, the Enforcement Bureau's Anchorage Office issued a Notice of Apparent Liability for Forfeiture and Order (*NAL*) proposing a \$10,000 forfeiture against ACS for failing to monitor the Antenna Structure's obstruction lighting on a daily basis or maintain a functioning alarm system; exhibit the Antenna Structure's required nighttime obstruction lighting; and notify the FAA of a known lighting outage on the Antenna Structure.<sup>3</sup> In its *NAL Response*, ACS does not dispute any of the facts nor deny the violations, but requests reduction or cancellation of the proposed forfeiture, stating that "[i]mmediately upon learning of the lighting issue, ACS Wireless arranged expeditious repair of the lighting on the Antenna Structure."<sup>4</sup> It also stated that it has "strengthened its internal recordkeeping requirements,

<sup>1</sup> 47 U.S.C. § 303(q).

<sup>2</sup> 47 C.F.R. §§ 17.47, 17.48, 17.51(a). The Commission recently amended Sections 17.47, 17.48, and 17.51 of the Rules. See *2004 and 2006 Biennial Regulatory Review – Streamlining and Other Revisions of Parts 1 and 17 of the Commission's Rules Governing Construction, Marking and Lighting of Antenna Structures*, Report and Order, 29 FCC Rcd 9787 (2014). The Rules cited to in this Forfeiture Order, however, were the Rules in effect at the time of the violations.

<sup>3</sup> *ACS Wireless, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 15464 (Enf. Bur. 2013) (*NAL*). A recitation of the facts of this case can be found in the *NAL* and is incorporated herein by reference.

<sup>4</sup> See Response of ACS Wireless, Inc., to Anchorage Office, Western Region, Enforcement Bureau, at 2 (Dec. 5, 2013) (on file in EB-FIELDWR-12-00005502) (*NAL Response*).

in order not only to monitor, but also document the status of the Antenna Structure lighting on a daily basis.”<sup>5</sup> ACS further claims that it “has a long history of compliance with Section 17.47, and can identify no other instance in which it has been fined or received a notice of apparent liability for violation of the tower lighting rules.”<sup>6</sup> In addition, ACS asserts that it has limited ability to pay the proposed forfeiture because of “uncertain” future revenues following the formation of The Alaska Wireless Network, LLC, which combined much of the wireless infrastructures of ACS and General Communications, Inc.<sup>7</sup>

### III. DISCUSSION

4. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>8</sup> Section 1.80 of the Rules,<sup>9</sup> and the *Forfeiture Policy Statement*.<sup>10</sup> In examining ACS’s *NAL Response*, Section 503(b)(2)(E) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>11</sup> As discussed below, we have fully considered ACS’s *NAL Response* in light of these statutory factors and find that reduction of the proposed forfeiture is warranted.

5. ACS does not deny any of the facts in the *NAL* and we therefore affirm the *NAL*’s findings that ACS willfully and repeatedly violated Section 303(q) of the Act and Sections 17.47, 17.48, and 17.51(a) of the Rules by failing to monitor the Antenna Structure’s obstruction lighting on a daily basis or maintain a functioning alarm system; exhibit the Antenna Structure’s required nighttime obstruction lighting; and notify the FAA of a known lighting outage on the Antenna Structure.<sup>12</sup> In its *NAL Response*, ACS states that it has a history of compliance with Section 17.47, the antenna structure lighting monitoring rule.<sup>13</sup> However, the *NAL* found ACS apparently liability for violations of Section 17.48 and Section 17.51(a) of the Rules, in addition to Section 17.48.<sup>14</sup> ACS fails to address its history of compliance with these other Rules. In any event, the Enforcement Bureau issued a \$3,000 forfeiture in 2005 against ACS for failing to update the ownership information for two of its antenna structures, in violation of Section 17.57 of the Rules.<sup>15</sup> Sanctions or warnings for violations of any Rule, not just the Rule violation currently under consideration, will eliminate a subject’s history of compliance forfeiture mitigation claim and we therefore find no basis for reducing or cancelling the proposed forfeiture against ACS based on compliance history.<sup>16</sup> ACS also argues that it has a “limited ability” to pay the proposed forfeiture.<sup>17</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 3. See *Applications of GCI Communication Corp., ACS Wireless License Sub, Inc., ACS of Anchorage License Sub, Inc., and Unicom, Inc. For Consent to Assign Licenses to the Alaska Wireless Network, LLC*, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd 10433 (2013) (granting multiple applications for the assignment of licenses from ACS to The Alaska Wireless Network, LLC).

<sup>8</sup> 47 U.S.C. § 503(b).

<sup>9</sup> 47 C.F.R. § 1.80.

<sup>10</sup> *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

<sup>11</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>12</sup> See *NAL supra* note 3.

<sup>13</sup> *NAL Response* at 2.

<sup>14</sup> *NAL*, 28 FCC Rcd. at 15464, para. 1.

<sup>15</sup> *ACS Wireless*, Forfeiture Order, 20 FCC Rcd 20233 (Enf. Bur. 2005).

However, it provides no evidence to substantiate this claim. While the Commission has stated that it has flexibility concerning what evidence it will consider when reviewing an inability to pay claim, the violator must produce some documentation to support its claim.<sup>18</sup> Consequently, we decline to reduce the forfeiture against ACS based its purported inability to pay.

6. ACS also requests reduction or cancellation of the proposed forfeiture given its efforts to repair the lights on the Antenna Structure.<sup>19</sup> The Commission has determined that “corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations.”<sup>20</sup> Consequently, we decline to reduce the proposed forfeiture based on ACS’s corrective efforts undertaken *after* being notified of the violation by the Anchorage Office. However, we note that ACS supplied evidence, including an invoice, showing that it engaged contractors to work on the Antenna Structure lighting prior to the time of the Anchorage Office inspection.<sup>21</sup> While this evidence does not excuse ACS’s violations, we find that it shows that ACS made a good faith effort to comply with the Rules. Consequently, we reduce the proposed forfeiture to \$8,000.<sup>22</sup>

#### IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Rules, ACS Wireless, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violations of Section 303(q) of the Act and Sections 17.47, 17.48, and 17.51(a) of the Rules.<sup>23</sup>

8. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.<sup>24</sup> If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.<sup>25</sup> ACS Wireless, Inc., shall send electronic notification of payment to WR-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159

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<sup>16</sup> *Crown Comm’n, Inc.*, Forfeiture Order, 15 FCC Rcd 21937, 21939, para. 9. (Enf. Bur. 2000); 47 C.F.R. § 1.80 (listing “[h]istory of overall compliance” as one downward forfeiture adjustment criteria).

<sup>17</sup> *NAL Response* at 2.

<sup>18</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17107, para. 44 (the Commission has the flexibility to consider any documentation, not just audited financial statements, that it considers probative, objective evidence of the violator’s ability to pay a forfeiture).

<sup>19</sup> *NAL Response* at 2.

<sup>20</sup> *See, e.g., Seawest Yacht Brokers*, Notice of Forfeiture, 9 FCC Rcd 6099, 6099, para. 7 (1994) (citations omitted); *Exec. Broad. Corp.*, Memorandum Opinion and Order, 3 FCC 2d 699, 700, para. 6 (1966) (“The fact that prompt corrective action was taken . . . does not excuse the prior violations.”).

<sup>21</sup> *NAL Response* at Exhibit B.

<sup>22</sup> *See Wagenvoord Adver. Grp., Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 12578 (Enf. Bur. 2014) (reducing forfeiture in light of violator’s good faith efforts to comply with the Commission’s antenna structure requirements prior to inspection).

<sup>23</sup> 47 U.S.C. §§ 303(q), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 17.47, 17.48, 17.51(a).

<sup>24</sup> 47 C.F.R. § 1.80.

<sup>25</sup> 47 U.S.C. § 504(a).

(Remittance Advice) must be submitted.<sup>26</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

9. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>27</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

10. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to ACS Wireless, Inc., at 600 Telephone Ave., Anchorage, AK 99503.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau

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<sup>26</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>27</sup> See 47 C.F.R. § 1.1914.